

Remarks:

The specification and drawings have been amended to correlate the reference numbers. Replacement sheets for Drawing Sheet 1 – FIGS. 1-3 and Drawing Sheet 6 – FIGS. 19-20 are attached as Appendix 1. Regarding the replacement drawing sheets, in Fig. 2, reference numbers “25”, “26”, and “27” have been added and reference number “20” has been changed to “14”. In Fig. 19, reference number “17” has been added and reference number 60 has been moved. In Fig. 20, reference number “4” has been changed to “41”.

Claims 1-4, 6-13, 15, 16, 18, 20-23, 25-30, 41-45, and 48-50 remain in this case. Claims 5, 14, 17, 19, 24, 31-40, and 46-47 have been canceled. Claims 3, 11-13, 16, 22-23, 25, 27-30, and 41-45 have been withdrawn.

Applicant hereby acknowledges the rejoinder of claims 15, 21, and 26.

Claims 15, 21, and 26 are objected to as being dependent upon a cancelled claim. These claims have been amended to depend from claim 1.

Claim 48 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Examiner appears to be confusing the term co-linear, meaning lying in the same line, with parallel. Claim 48 has been amended to more clearly define the relationship of the grooves.

Claim 22 has been rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Examiner has given no reason why claim 22 is indefinite. It is further noted that claim 22 is withdrawn. Therefore, applicant is unable to respond to the rejection of claim 22 unless Examiner positively rejoins claim 22 and states a reason for the rejection.

Claims 1, 2, 4, 6-10, 15, 18-20, and 48-50 have been rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,782,919 Zdeblick et al.

With respect to claim 1, Zdeblick et al. fails to disclose “wherein the body is asymmetric when viewed from the top and wherein one of the growth hole faces is a planar face and the other growth hole face is arcuate when viewed from the top”. Zdeblick’s device is symmetric with identical sides. Examiner has asserted that one side of Zdeblick’s device is arcuate while the other identical side is planar. This assertion makes no sense. The identical structure on each side of Zdeblick’s device is either arcuate or it is planar. Applicant has amended claim 1 to include the asymmetry of the vertebral body replacement as viewed from the top as shown in Applicant’s FIG. 25. Referring to Zdeblick FIG. 5, it is clear that his device is symmetric when viewed from the top. Thus, claim 1 does not read on Zdeblick and is therefore allowable over Zdeblick.

Claim 1 is further allowable over Zdeblick because Zdeblick fails to disclose “wherein the top includes at least one elongated groove that extends generally along the top anteriorly-to-posteriorly and parallel to the planar face; and wherein the bottom includes at least one groove that extends generally parallel to the planar face.” Examiner has asserted that Zdeblick’s screw threads are grooves parallel to planar surface 12. However, Examiner has on the one hand asserted that Zdeblick’s sides 22 are the growth hole faces and on the other hand that the groove (screw thread) is parallel to surface 12 which is perpendicular to the sides. Claim 1 clearly identifies the planar face as one of the growth hole faces distinct from the anterior and posterior faces and therefore claim 1 cannot read on Zdeblick. To further clarify this applicant has amended claim 1 to further state that the groove extends “generally along the top anteriorly-to-posteriorly”. Thus, claim 1 does not read on Zdeblick and is therefore allowable over Zdeblick.

Claims 2, 4, 6-10, 15, 18, 20, 21, 26, and 48-50 depend from claim 1 and are allowable for the same reasons as claim 1.

Claims 2-4, 48, and 49 are further allowable over Zdeblick because Zdeblick fails to disclose a groove as claimed in claim 1 and even if there was an element in Zdeblick that could be construed as a groove, claims 2-4, 48, and 49 further specify the characteristics of the groove.

Claim 10 is further allowable over Zdeblick because Zdeblick fails to disclose “wherein the anterior face is formed as a rounded portion that facilitates minimally invasive insertion”. Zdeblick’s anterior face is a planar surface and not rounded.

Claim 26 is further allowable over Zdeblick because Zdeblick fails to disclose “wherein the body comprises a plurality of bonded layers”.

Applicant believes that the claims remaining in this case are in condition for allowance and respectfully requests that a timely Notice of Allowance be issued in this case. Examiner is encouraged to contact Applicant by telephone with any questions about the content of this amendment or to discuss allowable subject matter to facilitate placing this case in condition for allowance.

Respectfully submitted,

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Appendix 1 – Replacement drawing sheets 1 and 6